Supreme Court, U.S.
FILED
MAY 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1622

IN THE

Supreme Court of the United States

October Term, 1985

STEVEN TODD ANDERSON, FORMERLY
STEVEN TODD JENKINS,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
THOMAS L. FABEL
Deputy Attorney General
Counsel of Record
Second Floor, Ford Building
117 University Avenue
Saint Paul, MN 55155
(612) 296-7579
Attorneys for Respondent

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

15pp

QUESTIONS PRESENTED

I. Whether the exclusion of certain evidence at trial was presented to the Minnesota Supreme Court as a substantial federal question which was resolved on federal grounds.

II. Whether the denial of a post-trial hearing on jury misconduct was presented to the Minnesota Supreme Court as a substantial federal question which was resolved on federal grounds.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities	iv
The Opinion Below	1
Statement of the Case	2
Reasons for Denying Certiorari	4
I. The State Court Decision Was Neither Considered Nor Resolved Upon Federal Grounds	4
II. The State Court Decision Implicates No Substantial Federal Question	6
Conclusion	10

TABLE OF AUTHORITIES

Federal Decisions:	Page
Chambers v. Mississippi, 410 U.S. 284 (1973)	6, 7
Estes v. Texas, 381 U.S. 532 (1965)	9
Fox Film Corp. v. Muller, 296 U.S. 207 (1935)	5
Green Bay & Miss Canel Co. v. Patten Paper Co., 172 U.S. 58 (1898)	6
Harding v. Illinois, 196 U.S. 78 (1904)	6
Lynch v. New York ex rel. Pierson, 293 U.S. 52 (1934)	5
Palmer Oil Corp. v. Amerada Corp., 343 U.S. 390 (1952)	4, 5, 6
Remmer v. United States, 350 U.S. 377 (1956)	9
Street v. New York, 394 U.S. 576 (1969)	5, 6
Turner v. Louisiana, 379 U.S. 466 (1965)	9
Washington v. Texas, 388 U.S. 14 (1967)	6, 7
Zucht v. King, 260 U.S. 174 (1922)	4, 6
Decisions From Other Jurisdictions:	
State v. Anderson, 379 N.W.2d 70 (Minn. 1985)	4, 8, 9
State v. Bouwman, 328 N.W.2d 703 (Minn. 1982)	8
Secondary Authorities:	
Annot., 43 A.L.R. Fed. 68 (1979)	8

IN THE

Supreme Court of the United States

October Term, 1985

No. 85-1622

TEVEN TODD ANDERSON, FORMERLY
STEVEN TODD JENKINS,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION

THE OPINION BELOW

Petitioner seeks a Writ of Certiorari to review the Judgment and Opinion of the Supreme Court of Minnesota in *State v. Anderson*, 379 N.W.2d 70 (Minn. 1985).

STATEMENT OF THE CASE

Petitioner was tried in April, 1984, on a six count indictment stemming from the ambush slayings of two men near Ruthton, Minnesota, on September 29, 1983. The jury returned verdicts of guilty for the highest level of homicide charged for each of the respective victims: first degree murder (premeditated) for the death of Rudolph Blythe, and second degree murder (intentional) for the death of Deems Thulin. By its verdicts the jury confirmed that petitioner was the actual killer of Blythe and Thulin.

Before trial petitioner noted an intent to present the defense of duress. In essence his pre-trial claim was that his participation in the murders was prompted by fear of his father, James Jenkins, who committed suicide after the murders.

Minnesota law limits the duress defense to acts produced by the compulsion of another, "who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death . . . ." Minn. Stat. § 609.08 (1984).[1]

Petitioner offered no evidence of duress at trial: no evidence of compulsion, no evidence of threats, and no evidence of reasonable apprehension of imminent death. He neither

---

[1] The entire statute provides as follows:

609.08 DURESS.

Except as provided in section 609.20, clause (3), when any crime is committed or participated in by two or more persons, any one of whom participates only under compulsion by another engaged therein, who by threats creates a reasonable apprehension in the mind of such participator that in case of refusal he is liable to instant death, such threats and apprehension constitute duress which will excuse such participator from criminal liability.

testified himself nor offered the testimony of any other witness which would have any relevance to this defense.

What petitioner wanted to offer in supposed support of the duress defense was evidence of various sorts which was far beyond the pale of admissibility under Minnesota law. This included the testimony of a psychiatrist who performed a psychiatric autopsy upon the personality of his father, and other witnesses who allegedly would have testified to negative aspects of the father's character and past behavior.

Another aspect of petitioner's pre-trial posture was that his father, not he, was the actual executioner of Blythe and Thulin. To support this he offered polygraph test results as well as the above-described evidence.

The above evidence was all the subject of pre-trial motions and rulings on admissibility. The psychiatric evidence concerning the father's personality and the polygraph test results were excluded under well-established principles of Minnesota law. The psychiatric opinion evidence was governed by *State v. Bouwman*, 328 N.W.2d 703 (Minn. 1982), and the polygraph evidence was governed by *State v. Michaeloff*, 324 N.W.2d 926 (Minn. 1982) and *State v. Wakefield*, 263 N.W.2d 76 (Minn. 1978).

Petitioner's proposed evidence regarding his father's character and past conduct were not the subject of outright exclusion. Rather, the trial court set guidelines for the admissibility of the evidence consistent with Minnesota Rules of Evidence, which are patterned after the Federal Rules. The Minnesota Supreme Court summarized this ruling as follows:

> The trial court ruled such evidence admissible only to the extent it would be admitted against James Jenkins himself under Minn. R. Evid. 404(a) and (b) were he a defendant. All exceptions to the general bar on bad

> character evidence would apply, allowing in evidence showing "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b). Thus, any evidence that James threatened or behaved threateningly towards the victims would be admitted. Further, the trial court ruled admissible any evidence of James' character or bad conduct relevant to Steven's proposed duress defense. The court was willing to consider any evidence with "some bearing on the general issue of intent," including conduct or statements by the father that occurred in Steven's presence or within his awareness, or evidence demonstrating "the nature of the relationship" between father and son.

State v. Anderson, 379 N.W.2d 70, 79-80 (Minn. 1985).

Following the jury verdict, petitioner requested a post-trial hearing to inquire into the possibility of jury misconduct. The request was denied because petitioner failed to present any evidence reasonably suggesting jury misconduct. As with the other issues now presented to this Court, the jury misconduct issue was resolved entirely on the basis of state law. *Id.* at 80.

REASONS FOR DENYING CERTIORARI

I. THE STATE COURT DECISION WAS NEITHER CONSIDERED NOR RESOLVED UPON FEDERAL GROUNDS.

It is axiomatic that before this Court can obtain jurisdiction under any part of 28 U.S.C. § 1257, there must be a substantial federal question raised, litigated and decided in the state court proceedings. *See Zucht v. King*, 260 U.S. 174 (1922); *Palmer Oil Corp. v. Amerada Corp.*, 343 U.S. 390

(1952). The petitioner for certiorari must specifically establish that the federal question was properly raised at the state court level, *Street v. New York*, 394 U.S. 576, 582 (1969), and that the federal question was a necessary component of the state court decision. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 54 (1934).

The petition in this case is totally defective under these standards. The only record submitted to this Court by petitioner is the judgment and opinion of the Minnesota Supreme Court, which alone reveal the absence of federal question litigation in the proceedings below.

The evidentiary questions and the jury misconduct allegation which petitioner is attempting to elevate to issues of constitutional dimension are discussed at length by the Minnesota Supreme Court at 379 N.W.2d 70, 78-80. Other than one brief reference to petitioner's post-trial motion, there is no mention whatsoever of federal issues or constitutional authorities. *See* 379 N.W.2d at 78. All of these issues are discussed and decided entirely upon the governing authority of state law.

The reason for the dearth of federal authority in the state court decision is simply that the arguments relied upon by petitioner before this Court were not urged upon the court below. Between the Appellant's and Respondent's briefs in the Minnesota Supreme Court, 23 pages were devoted to the evidentiary and jury misconduct issues now before this Court. In that entire span there were just two federal citations; *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), cited on the admissibility of scientific test results; and *Wheaton v. United States*, 133 F.2d 522 (10th Cir. 1943), cited on the proof burden for jury misconduct allegations. Neither of

those cases are cited in the Petition For Writ filed in this Court; and conversely *none* of the cases cited in the Petition were brought to the attention of the state court.

Petitioner's failure to demonstrate that the state court either considered or resolved these issues upon federal grounds must result in a denial of certiorari. *See Street v. New York*, 394 U.S. 576 (1969); *Harding v. Illinois*, 196 U.S. 78, 86 (1904); *Green Bay & Miss Canel Co. v. Patten Paper Co.*, 172 U.S. 58, 91 (1898).

II. THE STATE COURT DECISION IMPLICATES NO SUBSTANTIAL FEDERAL QUESTION.

Another recognized prerequisite to jurisdiction under 28 U.S.C. § 1257(3) is that any federal question at issue must be substantial. *See Palmer Oil Co. v. Amerada Petroleum Corp.*, 343 U.S. 390, 391 (1952); *Zucht v. King*, 260 U.S. 174, 176 (1922). The very obvious reason why the alleged federal questions in the Petition For Writ were not litigated in state court is that they are *not* substantial.

Petitioner has identified four separate rulings by the trial court, all affirmed by the Minnesota Supreme Court, which he now claims were constitutional error. The first three were evidentiary rulings: (1) the exclusion of psychiatric opinion testimony concerning his father's personality; (2) the exclusion of polygraph test results; and (3) the exclusion of remote and irrelevant testimony regarding his father's character and past conduct. The fourth ruling was the denial of petitioner's post-trial motion for a hearing on alleged jury misconduct, where no evidence had been presented which reasonably suggested the possibility of jury misconduct.

Petitioner rests his claim on the exclusion of evidence upon *Washington v. Texas*, 388 U.S. 14 (1967) and *Chambers v.*

Mississippi, 410 U.S. 284 (1973). Both of those cases involved state court rules which precluded murder defendants from examining witnesses who themselves had confessed to committing the crime. Additionally, in *Chambers* the defendant was precluded from calling witnesses to the confession.

In both cases, this Court held that such radical curtailment of a defendant's right to present a defense was violative of the Constitution. The state rule in *Washington* was repugnant to the Constitution because it "arbitrarily denied [defendant] the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, *and whose testimony would have been relevant and material to the defense.*" *Washington v. Texas*, 388 U.S. at 23 (emphasis added).

In *Chambers*, on the other hand, it was the combined effect of excluding both the examination of the confessing witness and the witnesses to the confession which resulted in constitutional error. *See Chambers v. Mississippi*, 410 U.S. at 302-03. The Court stressed, however, that *Chambers* was an egregious fact case, and that the holding did not "signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures." *Id.*

The challenged evidentiary rulings in this case are in no way analogous to the state court rulings in *Washington* and *Chambers*. Far from being "relevant and material" as in *Washington*, the excluded evidence here suffered the severe defects of being speculative, unreliable, remote, and irrelevant.

The psychiatric opinion testimony was an analysis of petitioner's father based upon interviews with petitioner and his family *after* the father's death. The evidence was offered to demonstrate that petitioner acted under duress, which is to

say that he lacked criminal intent. As noted by the Minnesota Supreme Court, the evidence "was too speculative and unreliable an opinion to be competent." *State v. Anderson,* 379 N.W.2d 70, 79 (Minn. 1985).

The exclusion of the psychiatric evidence at trial was based also upon *State v. Bouwman,* 328 N.W.2d 703 (Minn. 1982), which established the inadmissibility of psychiatric opinion testimony on the issue of criminal intent, except where the defense is mental illness or mental deficiency. This Minnesota rule rests upon the determination that psychiatric opinion on the subject of intent "is argumentative and of no probative value." *Id.* at 705.

The exclusion of polygraph test results was likewise based upon a Minnesota rule which is well reasoned and well established. The court below states it succinctly: "Polygraph test results are not admitted in Minnesota civil or criminal actions because there is insufficient evidence of their reliability." *State v. Anderson,* 379 N.W.2d at 79. This rule accords with the rule applied in most federal courts. *See generally,* Annot., 43 A.L.R. Fed. 68 (1979).

Finally, the state court's ruling on the admissibility of character evidence and specific acts of past conduct by petitioner's father was not at all as described in the Petition For Writ. Rather, the ruling was as described by the Minnesota Supreme Court, *see* 379 N.W.2d at 79-80, which of course is the entire record before this Court.

The official account of that ruling, as opposed to petitioner's account, reveals that the trial court granted petitioner liberal opportunity to introduce all relevant evidence suggesting either duress or the possibility that James Jenkins did the killing. *Id.* Contrary to petitioner's assertion in this Court, he was *not* precluded from introducing evidence of his father's

character, prior acts, or prior statements. The exclusionary effect of the ruling merely precluded evidence which was grossly irrelevant.

Thus, the evidentiary rulings complained of by petitioner can hardly be characterized as presenting substantial federal questions. Quite to the contrary, the rulings were direct applications of well-founded and generally accepted rules of evidence. Therefore, even if these rulings had been litigated in state court as federal questions (which they were not), and even if the court below had resolved them as federal questions (which it did not), they would still be inappropriate for certiorari because of a total want for substantiality.

Petitioner's last allegation of error pertains to the denial of his request for a post-trial hearing into possible jury misconduct. He relies upon *Estes v. Texas*, 381 U.S. 532 (1965), *Turner v. Louisiana*, 379 U.S. 466 (1965) and *Remmer v. United States*, 350 U.S. 377 (1956).

None of the above cases touch upon the issue in the court below, which was whether a post-trial hearing was required where petitioner presented no evidence suggesting jury misconduct. The only two dealing with jury issues, *Turner* and *Remmer*, involved fact situations which mandated the reversal of convictions.

The opinion of the Minnesota Supreme Court in this case reflects Minnesota's liberal inclination to grant hearings on alleged jury misconduct. *See State v. Anderson*, 379 N.W.2d at 80. It also reflects, however, the simple fact that petitioner's request for such a hearing was frivolous and totally without merit. *Id.* Unlike the *Turner* and *Remmer* cases, here there was no evidence whatsoever of misconduct or tampering—only rank speculation and innuendo.

As with the evidentiary issues, the jury misconduct issue was neither litigated nor resolved on federal grounds by the court below. Also like those issues, this claim is altogether lacking in substantiality.

CONCLUSION

For these reasons the Petition For A Writ Of Certiorari should be denied.

Respectfully submitted,

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota
THOMAS L. FABEL
Deputy Attorney General
Counsel of Record
Second Floor, Ford Building
117 University Avenue
Saint Paul, MN 55155
(612) 296-7579
Attorneys for Respondent